

Message Text

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DRAFTED BY L:MBFELDMAN:LHS

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EUR/WE - MR. MARSH

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FM SECSTATE WASHDC

TO AMEMBASSY PARIS PRIORITY

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E.O. 11652: N/A

"

TAGS: CPRS, PFOR, FR

SUBJECT: HOLDER-KERKOW EXTRADITION

REFS: (A) PARIS 16551; (B) STATE 148302

1. WE ARE NOT ARGUING THAT DECISION OF GRENOBLE COURT IS BINDING ON PARIS COURT. WE RECOGNIZE THAT PRINCIPLE OF STARE DECISIS NOT APPLIED IN FRANCE. WE ARE CONTENDING THAT THE PRINCIPLE ARTICULATED IN THAT DECISION WHICH HAS BEEN ADOPTED BY THE COURTS OF MANY STATES, AS CITED IN THE U.S. LEGAL MEMORANDUM SUBMITTED TO THE PARIS COURT, REPRESENTS THE EXPECTATIONS, I.E. THE INTENT, OF TREATY PARTIES AND IS THUS EMBODIED IN ARTICLE VI OF THE TREATY. THE TREATY IS THE LAW OF THE LAND IN BOTH FRANCE AND THE U.S. AND IS BINDING UPON THE JUDICIAL AUTHORITIES OF BOTH STATES.

2. TO MEET EMBASSY'S POINT THAT WE MAY BE OVER-EMPHASIZING THE GRENOBLE COURT DECISION, LAST SENTENCE OF PARAGRAPH E SHOULD BE REVISED TO READ "IN THE OPINION
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OF THE UNITED STATES GOVERNMENT, THIS PRINCIPLE, WHICH HAS BEEN GENERALLY ACCEPTED IN INTERNATIONAL EXTRADITION

PRACTICE, REPRESENTS THE EXPECTATIONS OF THE CONTRACTING PARTIES CONCERNING ARTICLE VI OF THE TREATY AND IS THEREFORE BINDING UPON THE JUDICIAL AUTHORITIES OF BOTH STATES."

3. DEPARTMENT WILL PUBLISH NOTE IN DUE COURSE, PROBABLY WHEN ANNUAL DIGEST OF INTERNATIONAL LAW IS PUBLISHED NEXT YEAR. WE WILL ADVISE EMBASSY IN ADVANCE OF RELEASE OF NOTE SO THAT YOU CAN INFORM GOF. WE WOULD PREFER YOU NOT RPT NOT RAISE QUESTION OF PUBLICATION WITH GOF AT THIS TIME.

4. WOULD APPRECIATE CITATIONS OF FRENCH CASES KNOWN TO EMBASSY WHICH HOLD, CONTRARY TO DECISION OF GRENOBLE COURT, THAT MERE POLITICAL MOTIVE IS ENOUGH TO QUALIFY A CRIME AS AN OFFENSE OF A POLITICAL CHARACTER. IT WILL BE HELPFUL IF YOU COULD OBTAIN AND POUCH COPIES OF THOSE DECISIONS. KISSINGER

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